



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 28, 1998

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR98-1787

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117395.

The McAllen Police Department (the "department") received an open records request for the offense report pertaining to an alleged sexual assault. You contend that the requested information is deemed confidential under section 51.14(d) of the Family Code. Setting aside the fact that section 51.14(d) has been repealed except with regard to juvenile offenses that occurred prior to January 1, 1996, the alleged offender in this case was nineteen years of age at the time of the offense. Neither section 51.14(d) nor the current version of this statute, section 58.007(c) of the Family Code, apply to the information at issue. *See* Fam. Code § 51.02(2) (defining "child").

We note, however, that the records at issue are made confidential by other law. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise confidentiality provisions because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

The records at issue pertain to the alleged sexual assault of a child. Consequently, it is section 261.201 of the Family Code that applies to the requested information. You have not informed this office of any rules the department has adopted that would permit access to the requested records. Because the information at issue pertains to an investigation of sexual assault of a child, this office concludes that the department must withhold the requested records in their entirety pursuant to section 261.201 of the Family Code. *But see* Fam. Code § 261.201(b) (provision for court ordered access), (f) (limited right of access to records held by Department of Protective and Regulatory Services).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/mjc

Ref.: ID# 117395

Enclosures: Submitted documents

cc: Mr. Marques Guzman
2900 N. 27th Lane
McAllen, Texas 78501
(w/o enclosures)